

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KARYL CLARKE,

Plaintiff,

v.

BUDGET SUITES OF AMERICA, et al.,

Defendants.

Case No. 2:24-cv-00422-RFB-EJY

ORDER

Pending before the Court is Plaintiff's Motion to Amend Complaint. ECF No. 29. Defendant Budget Suites of America ("Budget Suites") responds objecting on one basis only; that is, Defendant says service by Plaintiff was ineffective because it was untimely and, therefore, amendment would be futile. ECF No. 30.

It is true that Plaintiff commenced this action on March 1, 2024 by filing an application to proceed *in forma pauperis* together with a civil rights Complaint. ECF Nos. 1, 1-1. At that juncture there was no operative complaint on which Plaintiff was permitted to proceed. Thereafter, the Complaint was screened under 28 U.S.C. § 1915, dismissed without prejudice, and Plaintiff was granted leave to amend. ECF No. 3. Again, there was no operative complaint on which Plaintiff was permitted to proceed with service. *Id.*

Plaintiff filed a request for extension to file an amended complaint (ECF No. 6), which was granted on June 14, 2024. ECF No. 8. Plaintiff timely filed his Amended Complaint on July 3, 2024 (ECF No. 10), which was screened and which Order permitted service of process on Defendant Budget Suites. ECF No. 12. This Order was issued on August 1, 2024. *Id.* Defendant admits it was served on August 14, 2024. ECF No. 30. Under well settled law, screening is required before a litigant proceeding *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th Cir. 2015). Given the undisputed facts and applicable law, the Court finds Plaintiff's Second Amended Complaint is not futile based on a failure to effect timely service as

1 service was accomplished thirteen days after the Court issued its Order permitting the same. ECF
2 Nos. 12, 14.

3 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint (ECF
4 No. 29) is GRANTED.

5 IT IS FURTHER ORDERED that the Clerk of Court is respectfully requested to separate
6 pages 20 through 28 of ECF No. 29 from the remainder of that filing, and file the same on the docket
7 as Plaintiff's Second Amended Complaint and Jury Demand.

8 IT IS FURTHER ORDERED that the Clerk of Court **must** send Plaintiff **three** USM-285
9 forms to Plaintiff.

10 IT IS FURTHER ORDERED that Plaintiff **must** complete one USM-285 form for each
11 individual Defendant named in the Second Amended Complaint to the best of his ability and return
12 the same to the U.S. Marshal no later than **January 21, 2025**. The address to which the completed
13 USM-285 form is to be returned is as follows:

14 Gary G. Schofield
15 U.S. Marshal
16 District of Nevada
17 Lloyd D. George Federal Courthouse
333 Las Vegas Blvd. S., Suite 2058
Las Vegas, Nevada 89101

18 IT IS FURTHER ORDERED that the Clerk of Court **must** issue Summonses for Jacob
19 Powell, Abel Moreno, and Jake Becker and deliver the same, together with three copies of Plaintiff's
20 Second Amended Complaint, to the U.S. Marshal Service.

21 IT IS FURTHER ORDERED that the U.S. Marshal Service **must** attempt service on Jacob
22 Powell, Abel Moreno, and Jack Becker no later than fourteen (14) days after receipt of the USM-
23 285 from Plaintiff, which service must include the Second Amended Complaint and Summons.

24 IT IS FURTHER ORDERED that Defendant Budget Suites' responsive pleading to
25 Plaintiff's Second Amended Complaint is due on or before **January 21, 2025**.

26 Dated this 30th day of December, 2024.

27 
28 ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE